

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DENISE WRIGHT,)	
)	No. CV-09-3015-JPH
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION FOR SUMMARY JUDGMENT
)	
MICHAEL J. ASTRUE, Commissioner)	
of Social Security,)	
)	
Defendant.)	
)	
)	

BEFORE THE COURT are cross-motions for summary judgment noted for hearing without oral argument on December 18, 2009. (Ct. Recs. 22, 25). Attorney D. James Tree represents plaintiff; Special Assistant United States Attorney L. Jamala Edwards represents the Commissioner of Social Security ("Commissioner"). On December 8, 2009, plaintiff filed a rely (Ct. Rec. 27). The parties have consented to proceed before a magistrate judge. (Ct. Rec. 8.) After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** Defendant's Motion for Summary Judgment (Ct. Rec. 25) and **DENIES** Plaintiff's Motion for Summary Judgment (Ct. Rec. 22.)

JURISDICTION

Plaintiff protectively filed an application for supplemental security income (SSI) benefits on March 8, 2006, alleging onset as of January 2, 1994 (Tr. 57, 97), meaning she had to establish

1 disability as of her application date of March 8, 2006. The
2 application was denied initially and on reconsideration (Tr. 31-
3 32, 35-38).

4 A hearing was held August 19, 2008, before Administrative Law
5 Judge (ALJ) R. S. Chester. Plaintiff, represented by counsel, and
6 vocational expert William R. Wright [not related to plaintiff]
7 testified (Tr. 281-310). On September 18, 2008, the ALJ issued
8 his decision (Tr. 13-22) finding plaintiff not disabled as defined
9 by the Act (Tr. 22). On December 12, 2008, the Appeals Council
10 denied review (Tr. 2-5). Therefore, the ALJ's decision became the
11 final decision of the Commissioner, which is appealable to the
12 district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed
13 this action for judicial review pursuant to 42 U.S.C. § 405(g) on
14 February 9, 2009 (Ct. Recs. 2,4).

15 STATEMENT OF FACTS

16 The facts have been presented in the administrative hearing
17 transcript, the ALJ's decision, the briefs of both parties, and
18 are summarized here.

19 Plaintiff was 53 years old at the hearing (Tr. 286). She has
20 a high school education, one year of business college, and, in the
21 fall of 2003 and winter of 2004, completed two quarters of
22 community college in the field of allied health.¹ Plaintiff has
23 worked at Kmart, at a shelter as a kitchen helper, and as a
24 teacher's aide (Tr. 90, 209, 211, 291, 303-304).

25 Plaintiff testified she last worked in May of 2002, for four
26

27 ¹Plaintiff described the allied health courses as medical
28 assisting, coding, and billing (Tr. 289-290).

1 hours a day as a kitchen helper at the Union Gospel Mission. The
2 job was required by DSHS for plaintiff's receipt of benefits for
3 her son; however, when he was sent to juvenile prison in April of
4 2002, he no longer qualified for benefits (Tr. 290-291).

5 Plaintiff lives with her partner, her 23 year old son, and her
6 mother (Tr. 288). She states she is unable to work now due to
7 responsibilities "with my mother," partner, and son (Tr. 292). She
8 helps care for her granddaughter, who was almost six years old as
9 of the hearing; does all of the driving, as she is the only
10 household member who drives; runs all of the errands, and does
11 "everything outside of the home" (Tr. 292-293). Plaintiff
12 protectively alleges onset as of March 8, 2006, due to mental
13 impairments (Tr. 97).

14 SEQUENTIAL EVALUATION PROCESS

15 The Social Security Act (the "Act") defines "disability"
16 as the "inability to engage in any substantial gainful activity by
17 reason of any medically determinable physical or mental impairment
18 which can be expected to result in death or which has lasted or
19 can be expected to last for a continuous period of not less than
20 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The
21 Act also provides that a Plaintiff shall be determined to be under
22 a disability only if any impairments are of such severity that a
23 plaintiff is not only unable to do previous work but cannot,
24 considering plaintiff's age, education and work experiences,
25 engage in any other substantial gainful work which exists in the
26 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).
27 Thus, the definition of disability consists of both medical and
28 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156

1 (9th Cir. 2001).

2 The Commissioner has established a five-step sequential
3 evaluation process for determining whether a person is disabled.
4 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person
5 is engaged in substantial gainful activities. If so, benefits are
6 denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If
7 not, the decision maker proceeds to step two, which determines
8 whether plaintiff has a medically severe impairment or combination
9 of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii),
10 416.920(a)(4)(ii).

11 If plaintiff does not have a severe impairment or combination
12 of impairments, the disability claim is denied. If the impairment
13 is severe, the evaluation proceeds to the third step, which
14 compares plaintiff's impairment with a number of listed
15 impairments acknowledged by the Commissioner to be so severe as to
16 preclude substantial gainful activity. 20 C.F.R. §§
17 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P
18 App. 1. If the impairment meets or equals one of the listed
19 impairments, plaintiff is conclusively presumed to be disabled.
20 If the impairment is not one conclusively presumed to be
21 disabling, the evaluation proceeds to the fourth step, which
22 determines whether the impairment prevents plaintiff from
23 performing work which was performed in the past. If a plaintiff
24 is able to perform previous work, that Plaintiff is deemed not
25 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
26 At this step, plaintiff's residual functional capacity ("RFC")
27 assessment is considered. If plaintiff cannot perform this work,
28 the fifth and final step in the process determines whether

1 plaintiff is able to perform other work in the national economy in
2 view of plaintiff's residual functional capacity, age, education
3 and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
4 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

5 The initial burden of proof rests upon plaintiff to establish
6 a *prima facie* case of entitlement to disability benefits.

7 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*
8 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
9 met once plaintiff establishes that a physical or mental
10 impairment prevents the performance of previous work. The burden
11 then shifts, at step five, to the Commissioner to show that (1)
12 plaintiff can perform other substantial gainful activity and (2) a
13 "significant number of jobs exist in the national economy" which
14 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th
15 Cir. 1984).

16 STANDARD OF REVIEW

17 Congress has provided a limited scope of judicial review of a
18 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold
19 the Commissioner's decision, made through an ALJ, when the
20 determination is not based on legal error and is supported by
21 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995
22 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.
23 1999). "The [Commissioner's] determination that a plaintiff is
24 not disabled will be upheld if the findings of fact are supported
25 by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572
26 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence
27 is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d
28 1112, 1119 n. 10 (9th Cir. 1975), but less than a preponderance.

1 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);
2 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d
3 573, 576 (9th Cir. 1988). Substantial evidence "means such
4 evidence as a reasonable mind might accept as adequate to support
5 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
6 (citations omitted). "[S]uch inferences and conclusions as the
7 [Commissioner] may reasonably draw from the evidence" will also be
8 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965).
9 On review, the Court considers the record as a whole, not just the
10 evidence supporting the decision of the Commissioner. *Weetman v.*
11 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989) (quoting *Kornock v.*
12 *Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

13 It is the role of the trier of fact, not this Court, to
14 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
15 evidence supports more than one rational interpretation, the Court
16 may not substitute its judgment for that of the Commissioner.
17 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
18 (9th Cir. 1984). Nevertheless, a decision supported by
19 substantial evidence will still be set aside if the proper legal
20 standards were not applied in weighing the evidence and making the
21 decision. *Browner v. Secretary of Health and Human Services*, 839
22 F.2d 432, 433 (9th Cir. 1987). Thus, if there is substantial
23 evidence to support the administrative findings, or if there is
24 conflicting evidence that will support a finding of either
25 disability or nondisability, the finding of the Commissioner is
26 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir.
27 1987).

28 **ALJ'S FINDINGS**

1 At step one, the ALJ found plaintiff has not engaged in
2 substantial gainful activity since onset (Tr. 15). At steps two
3 and three, the ALJ found plaintiff suffers from a depressive mood
4 disorder/dysthymic disorder, recurrent, and a personality
5 disorder, impairments that are severe but which do not alone or
6 combination meet or medically equal a Listing impairment (Tr. 15-
7 17). The ALJ found plaintiff less than completely credible (Tr.
8 19). At step four, relying on the VE, the ALJ found plaintiff's
9 RFC for a range of work at all exertion levels (limited only by
10 psychological impairments) is consistent with the ability to
11 perform her past work as a kitchen helper. Although he found
12 plaintiff not disabled at step four (Tr. 19-20), the ALJ went on
13 to perform an alternative step five analysis. Again relying on
14 the vocational expert, ALJ Chester found there are other jobs
15 plaintiff could perform, including custodian, mail clerk, and
16 motel clerk (Tr. 21). Accordingly, the ALJ found plaintiff is not
17 disabled as defined by the Social Security Act (Tr. 22).

18 ISSUES

19 Plaintiff contends the Commissioner erroneously assessed the
20 evidence from treating and examining sources, as well as her
21 credibility (Ct. Rec. 23 at 11, 17). She alleges these errors led
22 the ALJ to ask the VE an incomplete hypothetical, resulting in
23 error at step five (Ct. Rec. 23 at 18-19). Additionally,
24 plaintiff alleges the ALJ erred by failing to determine whether
25 her part-time job as a kitchen helper qualified as relevant past
26 work because she earned less than the regulatory presumptive
27 amount (Ct. Rec. 23 at 17-18).

28 The Commissioner asks the Court to affirm the decision

1 because, he asserts, it is supported by the evidence and free of
2 error. (Ct. Rec. 26 at 5).

3 DISCUSSION

4 A. Weighing medical evidence

5 In social security proceedings, the claimant must prove the
6 existence of a physical or mental impairment by providing medical
7 evidence consisting of signs, symptoms, and laboratory findings;
8 the claimant's own statement of symptoms alone will not suffice.
9 20 C.F.R. § 416.908. The effects of all symptoms must be
10 evaluated on the basis of a medically determinable impairment
11 which can be shown to be the cause of the symptoms. 20 C.F.R. §
12 416.929. Once medical evidence of an underlying impairment has
13 been shown, medical findings are not required to support the
14 alleged severity of symptoms. *Bunnell v. Sullivan*, 947, F. 2d
15 341, 345 (9th Cr. 1991).

16 A treating physician's opinion is given special weight
17 because of familiarity with the claimant and the claimant's
18 physical condition. *Fair v. Bowen*, 885 F. 2d 597, 604-05 (9th
19 Cir. 1989). However, the treating physician's opinion is not
20 "necessarily conclusive as to either a physical condition or the
21 ultimate issue of disability." *Magallanes v. Bowen*, 881 F.2d 747,
22 751 (9th Cir. 1989) (citations omitted). More weight is given to
23 a treating physician than an examining physician. *Lester v.*
24 *Cater*, 81 F.3d 821, 830 (9th Cir. 1996). Correspondingly, more
25 weight is given to the opinions of treating and examining
26 physicians than to nonexamining physicians. *Benecke v. Barnhart*,
27 379 F. 3d 587, 592 (9th Cir. 2004). If the treating or examining
28 physician's opinions are not contradicted, they can be rejected

1 only with clear and convincing reasons. *Lester*, 81 F. 3d at 830.
2 If contradicted, the ALJ may reject an opinion if he states
3 specific, legitimate reasons that are supported by substantial
4 evidence. See *Flaten v. Secretary of Health and Human Serv.*, 44
5 F. 3d 1435, 1463 (9th Cir. 1995).

6 In addition to the testimony of a nonexamining medical
7 advisor, the ALJ must have other evidence to support a decision to
8 reject the opinion of a treating physician, such as laboratory
9 test results, contrary reports from examining physicians, and
10 testimony from the claimant that was inconsistent with the
11 treating physician's opinion. *Magallanes v. Bowen*, 881 F.2d 747,
12 751-52 (9th Cir. 1989); *Andrews v. Shalala*, 53 F.3d 1042-43 (9th
13 Cir. 1995).

14 Plaintiff alleges the ALJ improperly rejected the opinions of
15 treating and examining professionals at "Tr. 138, 142, 146, 150,
16 158, 162 and 236," unhelpfully, without naming the professionals
17 or citing the dates of the opinions (Ct. Rec. 23 at 12). The
18 Commissioner answers to the extent the ALJ rejected some of the
19 opinions, he gave specific, legitimate reasons supported by the
20 record (Ct. Rec. 26 at 10-13).

21 Plaintiff refers to **Tr. 138** (Ct. Rec. 23 at 12), a March 24,
22 2004, assessment by Michael Cates, M.Ed., two years before onset.
23 He opined counseling and psychiatric services were indicated but
24 just begun, plaintiff currently took no medication, and more time
25 was needed to assess progress. He opined mental health treatment
26 was likely to restore plaintiff's ability to work (Tr. 138-139).

27 Plaintiff refers to **Tr. 142** (Ct. Rec. 23 at 12), an opinion
28 by Peggy Champoux, MSW, on June 3, 2004, about three months later.

1 She diagnosed dysthymia. Plaintiff had been seen in therapy three
2 times. Ms. Champoux assessed marked and moderate limitations
3 expected to last no more than nine months (Tr. 141-143).

4 Plaintiff refers to **Tr. 146** (Ct. Rec. 23 at 12), an opinion
5 three months later, on September 16, 2004, by Ms. Champoux
6 indicating: (1) no marked and five moderate limitations; (2)
7 plaintiff not currently on medication; (3) when she is ready to
8 work on changes plaintiff can reapply for services, and (4) has
9 said she could probably get a part-time job. Ms. Champoux saw
10 plaintiff as employable (Tr. 145-147).

11 Plaintiff refers to **Tr. 150** (Ct. Rec. 23 at 12), an opinion
12 after another three months, on December 30, 2004, by Mr. Cates.
13 He diagnosed major depressive episode, severe, and dysthymic
14 disorder. Mr. Cates assessed six marked and seven moderate
15 limitations, noted medication was not currently prescribed,
16 plaintiff was not currently in mental health treatment, and
17 suggested plaintiff contact a primary care physician for
18 "medication consideration" (Ct. Rec. 149-151).

19 Plaintiff refers to **Tr. 158** (Ct. Rec. 23 at 12), an
20 assessment about five months before onset, on October 27, 2005.
21 Christopher Clark, M.Ed., observed treatment to date consisted of
22 "attending scheduled assessment," plaintiff not receiving
23 services, off of medication several months, and additional tests
24 or consultations needed. Mr. Clark assessed four marked and five
25 moderate limitations (Tr. 158-159).

26 Plaintiff refers to **Tr. 162** (Ct. Rec. 23 at 12), an
27 assessment by Mr. Clark four months later, on February 7, 2006 - a
28 month before onset. He again indicates treatment results to date

1 consist of "attended assessment as scheduled" and plaintiff is not
2 receiving services (Tr. 163). Mr. Clark assessed seven marked and
3 three moderate limitations (Tr. 161-162).

4 Plaintiff refers to Tr. **236** (Ct. Rec. 23 at 12), the
5 assessment two years later by Dick Moen, MSW. Mr. Moen assessed
6 four marked and three moderate limitations, but noted plaintiff
7 was not receiving mental health services (Tr. 235-237).

8 Significantly, plaintiff opined six months after onset, "I
9 need to get a job" (Tr. 204).

10 To the extent the ALJ rejected some of these opinions, his
11 reasons are legitimate, specific, and supported by substantial
12 evidence in the record. See *Lester v. Chater*, 81 F. 3d 821, 830-
13 831 (9th Cir. 1995)(holding that the ALJ must make findings
14 setting forth specific, legitimate reasons for rejecting the
15 treating physician's contradicted opinion). ALJ Chester weighed
16 the records of plaintiff's primary treating physician, Debra
17 Gould, M.D., in evaluating the evidence:

18 . . . for one year preceding her alleged onset
19 date of March 2006, her primary complaint was
20 insomnia, and while she reported depression, both
21 her insomnia and depressive complaints were clearly
22 and directly related to familial dysfunction with
23 multiple familial generations living in the same
24 household. . . while she reported depression, she
25 did not express or endorse any depressive symptomology,
26 instead she simply just cited various familial
27 situational disruptions and crisis.

28 (Tr. 15, referring to Exhibit B1F/70-78 at Tr. 173-181).

A few examples of the record pre-onset cited by the ALJ
include Dr. Gould's records dated March 15, 2005, a year before
onset, noting plaintiff sleeps better since taking prozac, has a
little more energy, and is considering applying for DVR; follow
through with counseling (Tr. 180). On November 23, 2005,

1 plaintiff said she last took prozac in August of 2005 (Tr. 176).
2 She described her son as having "major mental illness" (Tr. 176 -
3 December 23, 2005); and a domestic violence incident involving
4 her partner, Jimmy (Tr. 177 - July 1, 2005).

5 The ALJ also weighed the opinion of examining psychologist
6 Mr. Toews on May 12, 2006 (Tr. 125-128), two months after onset
7 (Tr. 15-16). Plaintiff indicated "she continues to be depressed
8 by family and situational problems that have gone on for years,"
9 and, as the ALJ notes, stated her mental state is better "when she
10 is free of family problems." (Tr. 15, referring to Tr. 125). The
11 ALJ points out reported symptoms (low energy, lack of motivation,
12 concentration/memory problems) were directly related to
13 plaintiff's youngest son, described to Mr. Toews as a "night owl"
14 who disturbs the household all night (Tr. 15 referring to Tr.
15 126). Plaintiff was taking prozac but, in Mr. Toews' opinion,
16 needed counseling (Tr. 126). He assessed a GAF of 60-65 (Tr. 128).
17 Perhaps most significantly, the ALJ notes the activities plaintiff
18 reported to Mr. Toews are inconsistent with disabling impairment,
19 as these include planning and preparing meals, housecleaning,
20 laundry, driving, shopping, attending church, and babysitting a
21 grandson (Tr. 16, referring to Tr. 127).

22 To further aid in weighing the conflicting medical evidence,
23 the ALJ evaluated plaintiff's credibility and found her less than
24 fully credible (Tr. 34). Credibility determinations bear on
25 evaluations of medical evidence when an ALJ is presented with
26 conflicting medical opinions or inconsistency between a claimant's
27 subjective complaints and diagnosed condition. *See Webb v.*
28 *Barnhart*, 433 F. 3d 683, 688 (9th Cir. 2005).

1 It is the province of the ALJ to make credibility
2 determinations. *Andrews v. Shalala*, 53 F. 3d 1035, 1039 (9th Cir.
3 1995). However, the ALJ's findings must be supported by specific
4 cogent reasons. *Rashad v. Sullivan*, 903 F. 2d 1229, 1231 (9th
5 Cir. 1990). Once the claimant produces medical evidence of an
6 underlying medical impairment, the ALJ may not discredit testimony
7 as to the severity of an impairment because it is unsupported by
8 medical evidence. *Reddick v. Chater*, 157 F. 3d 715, 722 (9th Cir.
9 1998). Absent affirmative evidence of malingering, the ALJ's
10 reasons for rejecting the claimant's testimony must be "clear and
11 convincing." *Lester v. Chater*, 81 F. 3d 821, 834 (9th Cir. 1995).
12 "General findings are insufficient: rather the ALJ must identify
13 what testimony not credible and what evidence undermines the
14 claimant's complaints." *Lester*, 81 F. 3d at 834; *Dodrill v.*
15 *Shalala*, 12 F. 3d 915, 918 (9th Cir. 1993).

16 The ALJ gave clear and convincing reasons for his credibility
17 assessment, some of which include failure to follow recommended
18 courses of treatment (including discharge from mental health
19 treatment for lack of commitment/motivation, Tr. 191), statements
20 inconsistent with medical evidence, and, as noted, activities
21 inconsistent with disabling impairment (Tr. 16-19). Each is fully
22 supported.

23 Plaintiff testified she quit taking antidepressants on her
24 own sometime during the previous year; they do not "seem to make
25 that much difference" (Tr. 296-297). The treatment records
26 indicate the opposite. In January of 2005, plaintiff told Dr.
27 Gould she wanted to start prozac because two years earlier it
28 helped with depression (Tr. 181). She "feels her affect and

1 insomnia continue to improve" (Tr. 179)(May 3, 2005). After
2 restarting prozac [plaintiff] feels she has more energy and
3 improved sleep (Tr. 175)(January 19, 2006).

4 The ALJ's reasons for finding plaintiff less than fully
5 credible are clear, convincing, and fully supported by the record.
6 *See Thomas v. Barnhart*, 278 F. 3d 947, 958-959 (9th Cir.
7 2002)(proper factors include inconsistencies in plaintiff's
8 statements, inconsistencies between statements and conduct, and
9 extent of daily activities). Noncompliance with medical care or
10 unexplained or inadequately explained reasons for failing to seek
11 medical treatment also cast doubt on a claimant's subjective
12 complaints. 20 C.F.R. §§ 404.1530, 426.930; *Fair v. Bowen*, 885 F.
13 2d 597, 603 (9th Cir. 1989).

14 The ALJ's credibility assessment is fully supported by the
15 record. The ALJ is responsible for reviewing the evidence and
16 resolving conflicts or ambiguities in testimony. *Magallanes v.*
17 *Bowen*, 881 F. 2d 747, 751 (9th Cir. 1989). It is the role of the
18 trier of fact, not this court, to resolve conflicts in evidence.
19 *Richardson*, 402 U.S. at 400. The court has a limited role in
20 determining whether the ALJ's decision is supported by substantial
21 evidence and may not substitute its own judgment for that of the
22 ALJ, even if it might justifiably have reached a different result
23 upon de novo review. 42 U.S.C. § 405 (g).

24 The ALJ's assessment of credibility and of the contradicted
25 opinions of some of the psychologists and therapists is without
26 error and fully supported by the evidence, including plaintiff's
27 testimony she cannot work because she is responsible for family
28 members.

1 **B. Steps four and five**

2 Plaintiff contends the ALJ failed to determine whether her
3 past work as a part-time kitchen helper was relevant work
4 (Ct. Rec. 23 at 17-18). Because the ALJ found at step one
5 plaintiff had not engaged in substantial gainful activity since
6 1985 (although it appears he meant 1995), the ALJ determined
7 plaintiff's earnings as a kitchen helper were at an amount less
8 than SGA. Even if the Court assumes for the sake of argument the
9 ALJ erred at step four, his alternative step five analysis is
10 fully supported by the record. Because the ALJ included all
11 limitations supported by the evidence, as discussed, he did not
12 commit error. *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir.
13 2005)

14 **CONCLUSION**

15 Having reviewed the record and the ALJ's conclusions, this
16 Court finds the ALJ's decision is free of legal error and
17 supported by substantial evidence..

18 **IT IS ORDERED:**

19 1. Defendant's Motion for Summary Judgment (**Ct. Rec. 25**) is
20 **GRANTED.**

21 2. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 22**) is
22 **DENIED.**

23 The District Court Executive is directed to file this Order,
24 provide copies to counsel for Plaintiff and Defendant, enter
25 judgment in favor of Defendant, and **CLOSE** this file.

26 DATED this 25th day of January, 2010.

27 s/ James P. Hutton

JAMES P. HUTTON

28 UNITED STATES MAGISTRATE JUDGE

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